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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re GLORIA O., et al., Persons Coming
Under the Juvenile Court Law.

B173740

(Super. Ct. No. CK50036)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

MAUREEN D.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Margaret Henry, Judge. Affirmed.

Peter Ferrera, under appointment by the Court of Appeal, for Defendant and Appellant.

Larry Cory, Assistant County Counsel, and Sterling Honea, Principal Deputy County Counsel, for Plaintiff and Respondent.

This is a mother's appeal from an order denying a petition in which she sought unmonitored visits with her children. We reject her claim of error and affirm the order.

FACTS

A.

Maureen D.'s seven children were taken into protective custody by the Department of Children and Family Services in September 2002, after the youngest, Elissa (sometimes referred to as "Aylissa"), tested positive for methamphetamine at the time of her birth. An amended petition alleged that Maureen had also tested positive for methamphetamine, that she had a history of substance abuse, and that the six older children had been neglected and subjected to ongoing domestic violence.¹ Some of the children were placed with relatives, the others in foster care, and the petition was sustained in October, with the usual services ordered for Maureen.

The Department reported in April 2003 that Maureen visited the children sporadically and had flatly refused all referrals for services because she did not want to begin the reunification process absent an assurance that she would be reunited with the children: "I really don't know why I should do all these things if I'm not getting them back anyways. What's the use?" A family visit was

¹ The children are Gloria O. (who was 9 in September 2002), Christina O. (8), Jasmine O. (6), Maleah O. (5), Richard O. (3), Destiny O. (2), and Elissa D. (whose birth in August 2002 triggered these proceedings). Richard O., Sr., the father of the six elder children, and Robert T., Elissa's father, are not parties to this appeal.

arranged for Maureen with all of the children in July, but she continued to refuse all offered services.

By November, Gloria, Jasmine, and Maleah were living together with Juanita P., their maternal cousin; Christina was living in a foster care group home; Richard and Destiny were living together in a foster home; and Elissa was living with Jessica S., another maternal cousin, who was interested in adopting Elissa. By then, Maureen had finally enrolled in a drug rehabilitation program, was attending parenting and domestic violence classes, and was testing clean. She visited some of the children occasionally, but none of them with any regularity. The Department recommended long-term foster care for Christina; legal guardianships with Juanita for Gloria, Jasmine, and Maleah; and adoption for the three youngest children, Richard, Destiny, and Elissa. The matter was set for a contested hearing. (Welf. & Inst. Code, § 366.26.)²

B.

On November 18, 2003, Maureen filed a petition for modification of visitation, asking for unmonitored visits "to begin immediately with gradual return of the children" to her home. (§ 388.) Exhibits attached to her petition showed that Maureen had attended 38 drug rehabilitation sessions and had tested clean for 12 consecutive times. The court set the matter for hearing.

The Department opposed the petition on the ground that four months of sobriety did not amount to changed circumstances, and that unmonitored visits were not in the children's best interests because Maureen -- pregnant again with her eighth child -- had yet to address the problems that brought the children

into the dependency system. Most of the older children regressed after their visits with Maureen, displaying frustration, anger and depression, and acting inappropriately (Gloria and Maleah defecated in their clothes).

The hearing was held over several days in early 2004. Nina Sorkin, Maureen's drug rehabilitation counselor, testified that Maureen was regularly attending classes and was about half-way through the program. During visits monitored by Sorkin, Maureen behaved appropriately, and it was Sorkin's view that post-visit regressive behavior was normal. On the other hand, the children's social worker presented a record of documented emotional distress suffered by each of the children, particularly when there were unauthorized unmonitored visits. Based on those reactions and the fact that Maureen had been in rehabilitation for only a short time, the social worker opined that Maureen's request for unmonitored visits was premature.

Gloria, Christina, Jasmine, and Maleah all testified that they wanted to spend more time with their mother and that they thought she was getting better, but Gloria, Christina, and Maleah conceded they had acted out after their visits with Maureen. Juanita (Jasmine, Gloria and Maleah's caretaker) testified that Maureen had never contacted her to arrange visits, and that the girls' behavior deteriorated when they returned from visits arranged by the social worker.

Maureen testified that she was residing in a sober living house with her new baby (born in January 2004) and that she was aware of the older children's regressive behavior, but she thought she should have unmonitored visits because she had "changed."

² All section references are to the Welfare and Institutions Code.

At the conclusion of the hearing, all of the lawyers representing the children joined with the Department in recommending *against* unmonitored visits. The court, in turn, found that the circumstances had changed and commended Maureen for her progress, but found it would not be in the best interests of the children to permit unmonitored visits at that time because Maureen still had much progress to make. The court increased the number of visits for the four eldest children and gave the Department discretion to make the visits unmonitored. Following its ruling on the section 388 petition, the dependency court conducted a section 366.26 hearing with regard to Jasmine and Maleah, found they were not adoptable, and appointed Juanita as their legal guardian.³ The court found Elissa was adoptable, terminated Maureen's parental rights, and referred Elissa's case for adoption.

Maureen appeals from the order denying her section 388 petition and, to protect her rights should we agree with that appeal, from the order granting legal guardianships over Jasmine and Maleah. Maureen does not challenge the other orders.

DISCUSSION

We reject Maureen's contention that her section 388 petition should have been granted as to the four oldest children (and thus do not reach her challenge to the legal guardianship orders).⁴

³ Juanita did not accept the appointment for Gloria, and she was placed with other relatives.

⁴ Maureen's brief suggests somewhat indirectly that the dependency court should have ordered further reunification services, but that issue was not raised in her section 388 petition and was not

To prevail on a section 388 petition, a parent must demonstrate both a change of circumstances and that the modification would be in the child's best interests -- and where, as here, the petition is filed on the eve of a pending section 366.26 hearing, the focus is on the child's need for stability and permanence. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526; *In re Marilyn H.* (1993) 5 Cal.4th 295, 309.)

As noted above, the dependency court credited and complemented Maureen with regard to her efforts, but properly put the emphasis on the best interests of the children. Substantial evidence supports that decision and makes it clear there was no abuse of discretion. Maureen was just half-way through her drug rehabilitation program, and she had yet to acknowledge the problems that caused her to lose custody of the children in the first instance. More to the point, the dependency court liberalized Maureen's visitation schedule and simply found that her petition was premature. When she has completed the programs, she can renew her request.

considered by the dependency court. For those reasons, we do not reach it here.

DISPOSITION

The orders are affirmed.

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VOGEL, J.

We concur:

ORTEGA, Acting P.J.

MALLANO, J.